FILE COPY

IN THE

Supreme Court of the United States

October Term, 1944 **No. 44**

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

against

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Motion for Leave To File Brief and To Make Oral Argument as *Amicus Curiae*

MAY IT PLEASE THE COURT:

The undersigned respectfully moves this Honorable Court for leave as *amicus curiae* to file a brief and make oral argument with respect to the unconstitutionality of the statute upon which the indictment herein was based, for the following reasons:

1. The Circuit Court of Appeals below assigned John F. X. Finn to the defense in that court of the petitioner Rapp. Pursuant to such assignment the appeal below was duly briefed and argued on November 15, 1943. Thereafter and on February 29, 1944, the Circuit Court of Appeals decided the said appeal adversely to all of the petitioners.

2. On March 27, 1944, John F. X. Finn, as assigned attorney for the petitioner Rapp and others, joined in a petition to this Court for a writ of certiorari. Such petition was filed on March 29, 1944.

3. Subsequently, and on April 1, 1944, the petitioner Max Rapp wrote to his assigned counsel the following letter:

"April 1, 1944

From Max Rapp 1600
F.C.I Sandstone, Minn
To John F. X. Finn

Dear Sir:

For your information pleace be advised that I have made application to the U.S. Supreme Court for a Writ of Certiorari as a attorney pro se and have filed my own brief in the matter.

I also request delivery to me all legal papers in your possession that rightly belong to me.

Very truly yours,

MAX RAPP

Max Rapp
1600"

4. Certiorari was granted on May 15, 1944, but because of the letter aforesaid there is doubt as to the status and duty of assigned counsel with respect to the defense of said Rapp in this Court.

5. The brief which the undersigned has prepared for filing and argument in this Court, and which he submits simultaneously herewith, urges but one point, viz., the unconstitutionality of the statute upon which the indictment was based. While this point is implicit in the Consolidated Brief which is being filed on behalf of all petitioners represented by assigned counsel, it is not developed therein specifically or at length. In view of that fact, the point of unconstitutionality is urged by the undersigned, as *amicus curiae*, not only on behalf of the petitioner Rapp, but also on behalf of all of the petitioners who are represented by assigned counsel.

WHEREFORE, the undersigned respectfully prays that the Court grant leave to file the annexed brief and to make oral argument as *amicus curiae* upon the point of unconstitutionality as aforesaid.

Dated: New York, October 20, 1944.

Respectfully submitted,

JOHN F. X. FINN,
Attorney assigned by the Circuit Court of Appeals below to the defense of the petitioner Rapp, whose services in this Court apparently have been rejected by said petitioner,
165 Broadway, New York 6, N. Y.